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7	UNITED STATES DISTRICT COURT		
8	DISTRICT OF NEVADA		
9	9 DANIEL W. KAPETAN,)		
10	10 Petitioner, 3:11-cv-00282-RCJ-	VPC	
11	11 vs. ORDER		
12	12 JAMES COX, et al.,		
13	13 Respondents.		
14	14		
15	This action is a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254		
16	by a Nevada state prisoner. Several motions are pending before the Court.		
17	Respondents filed a motion to dismiss the petition on September 29, 2011, in which they		
18	argued, among other things, that some claims in the petition were unexhausted. (ECF No. 18).		
19	Petitioner filed a response to the motion to dismiss and a motion to amend the petition. (ECF No. 27)		
20	& 28). In that document, petitioner states that he wishes to file an amended petition that includes		
21	only unexhausted claims. (Id., at p. 9). On October 25, 2011, respondents filed a statement of non-		
22	opposition to petitioner's motion to file an amended petition. (ECF No. 30). Petitioner filed an		
23	amended petition on January 17, 2012. (ECF No. 37).		
24	A party may amend a pleading once as a matter of course if the ple	A party may amend a pleading once as a matter of course if the pleading either 21 days after	
25	serving it, or if the pleading is one to which a responsive pleading required, 21 days after service of		
26	such motion. Fed. R. Civ. P. 15(a)(1) (A), (B). "In all other cases, a party may amend its pleading		

only the with the opposing party's written consent or the court's leave. The court should freely grant 1 2 leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In the instant case, the Court grants 3 petitioner's motion for leave to file an amended petition. This action shall proceed on the amended petition. (ECF No. 37). Respondents' motion to dismiss the original petition is denied as moot. 4 5 Respondents will be given the opportunity to file a responsive pleading to the amended petition, as 6 specified at the conclusion of this order. 7 On January 12, 2012, respondents filed a motion that Brian E. Williams, Jr. be substituted for 8 and in place of respondent James Cox, because Williams has succeeded Cox as warden of Southern 9 Desert Correctional Center. (ECF No. 35). Pursuant to Fed. R. Civ. P. 25(d), respondents' motion 10 to substitute Williams in place of Cox is granted. 11 Petitioner filed a motion a writ of habeas corpus regarding his original petition. (ECF No. 12 17). Petitioner has filed a motion for judgment on the pleadings regarding his amended petition, as 13 well as a motion to change the name of the motion to a motion for summary judgment. (ECF Nos. 14 46 & 47). Each of these motions are denied, as a petition for a writ of habeas corpus cannot be 15 granted on default. Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990). 16 Petitioner has filed two motions to expedite a decision in this action. (ECF Nos. 42 & 43). 17 Petitioner's motions are now denied as moot. 18 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss the petition (ECF No. 18) is **DENIED AS MOOT.** 19 20 **IT IS FURTHER ORDERED** that petitioner's motion to file an amended petition (ECF No. 27) is **GRANTED**, and this action **SHALL PROCEED** on the amended petition (ECF No. 37). 21 22 IT IS FURTHER ORDERED that respondents' motion to strike the amended petition (ECF 23 No. 40) is **DENIED.** 24 /// 25 ///

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IT IS FURTHER ORDERED that respondents' motion to substitute a party (ECF No. 35) is **GRANTED**. Brian E. Williams, Jr. **SHALL BE SUBSTITUTED** for and in place of respondent James Cox. The Clerk of Court **SHALL MODIFY** the docket in this case to reflect the substitution.

IT IS FURTHER ORDERED that petitioner's motion to withdraw (ECF No. 36) his motion for a court order (ECF No. 33) is **GRANTED**. The motion for a court order (ECF No. 33) is **STRICKEN** from the record.

IT IS FURTHER ORDERED that petitioner's motion for a writ of habeas corpus (ECF No. 17), petitioner's motion for judgment on the pleadings (ECF No. 46), and petitioner's motion to convert the name of his motion (ECF No. 47) are **DENIED**.

IT IS FURTHER ORDERED that petitioner's motions to expedite decision (ECF Nos. 42 & 43) are DENIED AS MOOT.

IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from entry of this order within which to answer, or otherwise respond to, the amended petition. In their answer or other response, respondents shall address all claims presented by petitioner in the amended petition. Respondents shall raise all potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and procedural default. Successive motions to dismiss will not be entertained. If an answer is filed, respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have forty-five (45) days from the date of service of the answer to file a reply.

Dated this 21st day of September, 2012.

UMTED STATES DISTRICT JUDGE